

## **FINAL STATEMENT OF REASONS**

### **Overview/Non-Controlling Summary**

#### **Amendment of Sales and Use Tax Regulation 1802**

#### **Place of Sale and Use for Purposes of Bradley Burns Uniform Local Sales and Use Tax**

#### **Update**

Regulation 1802 interprets and explains the Sales and Use Tax Law as it applies to allocation of local sales and use tax revenues.

#### **Specific Purpose**

The purpose of the proposed amendment is to interpret, implement, and make specific Revenue and Taxation Code Section 7205 as it applies to allocation of local sales tax revenues. This amendment is necessary to provide guidance to the taxpayers that engage in such transactions.

#### **Factual Basis**

Regulation 1802, in part, provides that a sale is consummated at the retailer's sales office if the retailer has only one sales office in the state and that sales office participates in the sale at issue. The Board amended the regulation to clarify that the sales office must participate in the sale for the local sales tax revenue derived from the sale to be allocated to the location of the sales office.

Subdivision (a)(1)- phrase "which participates in the sale," and word "such" added to clarify that only local sales tax revenues derived from sales negotiated at the retailer's sales office are allocated to the location of that office.

#### **Local Mandate Determination**

The Board of Equalization has determined that the amended regulation does not impose a mandate on local agencies or school districts.

#### **Response to Public Comment**

On December 18, 2002, the Board held a public hearing on the proposed amendments to Regulation 1802. Eight items of written comment had been previously received. All of the letters were virtually identical, indicating a common source. In lieu of listing each one separately, therefore, they are discussed collectively. (See, Tabs 10-17 of the Rulemaking File.) Although the public comment received from Mr. Robert Cendejas (Tab 14) was not as extensive as that of the other comments, as to the issue he does mention, his recommendation was the same as that of the other commentators, so his letter is discussed with theirs.

1. Subdivision (a)(1): all public comments suggested that the word “such” be added after the word “all” in the subdivision (Mr. Cendejas suggested the word “those”) to clarify that only the local sales tax revenues derived from sales actually negotiated at the sales office would be allocated to its location. The Board accepted this comment and amended the published version of the regulation.
2. Subdivision (b)(3): the comments stated they were opposed to “all” the proposed amendments except that for subdivision (a)(1) but focussed no specific comment on the proposed deletion of the operative date in this subdivision. Based on the general statement, the Board deleted this amendment.
3. Subdivision (b)(5):
  - a. Operative Date: the comments opposed the proposed amendment to move the operative date from the beginning of the first sentence to the beginning of the subdivision. They argued that this was a substantive change rather than an administrative one and suggested that this be placed on the agenda of the Business Taxes Committee for discussion under the normal procedures. The board accepted this comment and deleted the amendment.
  - b. New subdivisions (A) and (B). The comments argued that the proposed amendments were duplicative of existing provisions of Regulation 1699 that permitted the registration of one selling activity as supplying registration for another as long as they were conducted on the same premises by the same person. The Board accepted this comment and deleted the proposed amendment.
4. Subdivision (c): the comments stated they were opposed to “all” the proposed amendments except that for subdivision (a)(1) but focussed no specific comment on the proposed reorganization of this subdivision. Based on the general statement, the Board deleted this amendment.

At the Public Hearing on February 6, 2003, Mr. Cendejas and Mr. Albin C. Koch, representing MBIA/MMC appeared and reiterated their written comment. The Board ruled that the proposed changes to the published version were, under OAL Rule 42, sufficiently related to the published version and referred the changed version to the 15-day file.

The Notice to Interested Parties was issued on January 17, 2003. Oral comment was received requesting that, in subdivision (a)(1), the comma after the word “state” be deleted. The purpose was to clarify that the phrase “place of business which participates in the sale” contains two requirements that both must be satisfied for the local sales tax revenues derived from sales negotiated at that office to be allocated to its location. At the Rulemaking Calendar on February 6, 2003, the Board accepted this comment. It concluded that the change was non-substantive under OAL Rule 40 and adopted the regulation.

**Small Business Impact**

The Board of Equalization has determined that the amended regulation will not have a significant adverse economic impact on small businesses.

**Adverse Economic Impact on Private Persons/Businesses Not Including Small Business**

No impact.

**Federal Regulations**

Regulation 1802 and the proposed change have no comparable federal regulations.

**Alternatives Considered**

By its motion, the Board determined no alternative to amending the regulation would be more effective in carrying out the purpose for which the regulation is proposed or would be as effective and less burdensome to affected private persons than the adopted regulation.